The appellant made a statement from the dock, and said that he was the manager of Chop Hong Hin, and had been the manager for about five years. His wages were $30 a month.

Ng Wee Chuang, a partner in Chop Hong Hin, stated that the appellant was the manager at $30 a month, and that he had no proprietary interest or share in the firm. He is, however, entitled to a bonus on the profits. He operates the banking account. No. 105 Rembau Street is the store-house of the firm.

From the facts the learned Magistrate has held that the appellant is the manager of Chop Hong Hin, with a substantial interest in the profits of the firm. The learned Magistrate has further found that as the manager he is responsible for the premises in which Chop Hong Hin have their business. From this he has deduced that the appellant is the consumer.

Now, the Enactment defines 'consumer' as meaning:

" the person who is supplied with energy or whose premises are for the time being connected for the purposes of a supply of energy with any system of public supply."

This language could hardly be wider. It includes the landlord, the tenant and also the person who is supplied. There is no suggestion that any contractual relationship should be considered. And inasmuch as the Enactment relates to all matters connected with
[113] the supply of energy and [113] to offences committed in connection with the supply, the definition of the word 'consumer' would have to be very wide so as to reach every person to be affected by the Enactment. I am, therefore, satisfied that in construing it there should be no narrowing of its plain meannig by the importation of limitations.

Reference has been made to the use of the word 'consumer' in various sections of the Enactment, with a view to limiting its meaning. Such may well be done where there is no definition of a word. But where there is a definition, then there cannot be any general limitation because in one or other section a more limited interpretation may have been given.

Section 43(ii)(w) and (y) has been specially referred to. This relates mainly to charges and payments in respect of a Government supply only. There is nothing in it to limit the wide language of the definition generally. The Rules at p. 251 of the 1925 Enactments have also been referred to. No doubt it is of general advantage to have a supply regularised by some sort of contract showing the period for which the supply is to be made, the purposes for which the supply is to be made, and allowing the supply to be determined on notice being given. But the fact that such contracts may be entered into cannot exclude from liability, financial or otherwise, persons who may not have entered into any agreement. And even though financially the person supplied might avoid liability by showing that it was the principal and not himself who must be looked to for payment, yet the fact that he has been supplied remains.

Therefore, such a person comes within the definition of 'consumer.' There can be no doubt that in the present case the appellant was such a person. He is admittedly the manager of the business. It would rest entirely with him whether the electricity was supplied or not. Accordingly he comes within the definition of 'consumer,' and inasmuch as the meter was under his control, there is *prima facie* evidence that the alteration of the meter has been fraudulently, knowingly and wilfully caused by him. Of course it was open to him to have produced evidence to show that he was innocent of any offence. He has not chosen to do so. He has not even gone into the witness-box and given evidence.

In my opinion the decision of the learned Magistrate was correct, and this appeal must be dismissed.

Appeal dismissed.

PUBLIC PROSECUTOR v. ANG POOI & ANOR.

[A. Cr. J. (Pedlow J.) March 20, 1936]

[Selangor Magistrate's Criminal Appeal No. 2 of 1936]

Excise Enactment (Cap. 133), s.54 — Analyst — The Evidence Enactment (Cap. 10), s.45 — Expert evidence.

In a prosecution under the Excise Enactment (Cap. 133) for being in possession of intoxicating liquor it is not only an 'Analyst" defined in section 54 who can give evidence of the amount of alcohol in such liquor. The alcoholic contents of such liquor may be proved by any person experienced in testing such liquor in the course of his duties provided that the Court is satisfied that such person possesses sufficient experience to qualify him to testify as an expert.

Whitton (Deputy Public Prosecutor) for the appel-*Rajasooria* for the respondents.

Pedlow J.: The house in which the respondents lived was raided on the 5th December, 1935, by Mr. Lewis, Assistant Superintendent of Customs, and three outdoor officers, and the respondents were subsequently charged under the Excise Enactment (Cap. 133) before the Magistrate's Court at Kuala Selangor, the woman under section 63(c) with destroying the contents of a saucepan to prevent the seizure thereof and the man with obstruction under section 63(a) and with possession of one pint of intoxicating liquor to wit samsu, contrary to section 6(a). They were acquitted on all charges, and against their acquittal the Public Prosecutor has appealed.

The main facts of the case are that when the outdoor officers entered the shop of the male respondent he sought to prevent their going through to the kitchen at the back of the shop and that when they did reach the kitchen they found the female respondent pouring the liquid contents of a saucepan down the drain at the bathroom. A pint of the contents was rescued and Mr. Lewis gave evidence at the trial that the liquid was samsu.

The learned Magistrate held that, as Mr. Lewis had not been gazetted an analyst within the meaning of section 54 of the Excise Enactment, he was not capable of testing samsu and that, therefore, the fact that the liquid seized was samsu had not been proved. On this ground he dismissed the charge against the woman and the possession charge against the man, and the main point at issue in this appeal is whether he was correct in doing so.

[114] [114] In my opinion the learned Magistrate was wrong in holding that only an "Analyst" as defined in section 54 could give evidence as to the nature of the liquid before the Court. Section 54 of the Excise Enactment does not shut out such other evidence. It is not a case of *expressio unius est exclusio alterius.* All that the section says is that if an "Analyst" does give evidence he may do so by means of a certificate unless either party requires him to be called to give oral evidence. If other evidence is called it must, of course, be oral.

This brings us to the question of what other evidence, if any, may be called and the answer is to be found in section 45 of the Evidence Enactment (Cap. 10). The nature of the liquid is a question of science and evidence on the point may, therefore, be given by a person specially skilled in such science. Was Mr. Lewis a person so skilled? He states in evidence, "I tested the samsu and found it to be one pint of samsu containing 13 per centum of alcohol by weight, value and duty amounted 54 cents. I tested the liquor in the course of my duty for the last seven years." In my opinion seven years' experience of this work is more than sufficient to constitute him an expert within the meaning of the section. The testing of a liquid for its alcoholic content either by the cold test or by distillation is not a matter of any great difficulty provided one has the necessary apparatus, and, even if it were, seven years' experience of the work should make a normal person expert at it. I would suggest that training and practical experience over a very much shorter period would normally be quite sufficient. The matter is clearly put on page 446 of the 9th edition of the Law of Evidence by *Woodroffe & Ameer Ali* where it is stated:—

> "Of course no exact test can be laid down by which one can determine with mathematical precision how much skill or experience a witness must possess to qualify him to testify as an expert. That question rests within the fair discretion of the Court, whose duty it is to decide whether the experience or study of the witness has been such as to make his opinions of any value."

It may be remarked in passing for the guidance of Magistrates that the competency of the expert should be shown before his evidence is properly admissible.

It was argued for the respondents that an unreported judgment of Terrell Ag. C.J. in Selangor Magistrate's Criminal Appeal No. 33 of 1933 was against the above view. I have got before me a copy of that judgment and the relevant passage is:—

> "There was also the objection that there is no evidence that Mr. Harward the Assistant Superintendent of Customs had any qualifications as an analyst. I think this objection is also fatal to the first and third charges."

I take this to mean merely that the defect lay in there having been no evidence recorded as to Mr. Harward's qualifications. In the present case Mr. Lewis's experience was set out.

On the above view of section 54 of the Excise Enactment (Cap. 133) I allow the appeal of the Public Prosecutor so far as Ang Pooi is concerned and direct that the Magistrate reopen the case and call on her for her defence.

In the case of the second respondent, Lim Keh, I dismiss the appeals against his acquittal on both charges though not for the same reasons exactly as influenced the learned Magistrate. I do not think that the prosecution has proved sufficiently possession by him of the liquid which the woman was found pouring out. No evidence was led that she was his wife and the kitchen was apparently also used by other persons living upstairs.

As to the obstruction charge the outdoor officers entered the house disguised in shorts and shirts as Chinese and Tamil civilians and when questioned refused to state who they were contrary to the provisions of section 8(ii) of the Excise Enactment (Cap. 133). Under the circumstances I do not think that a charge under section 63(a) can succeed.

Appeal partly allowed.

JAGAR SINGH v. PUBLIC PROSECUTOR

[A. Cr. J. (Howes J.) March 20, 1936]

[Perak Magistrate's Criminal Appeal No. 92 of 1935]

The Motor Vehicles Enactment (Cap. 168), s.46(i) — Driving "carelessly or without reasonable regard to the safety or convenience of other persons using the road" — Two separate offences — The Criminal Procedure Code (Cap. 6), ss.163, 166 and 422 — Duplicity of charges — Illegality.

The appellant was convicted on a charge setting forth that he drove his car carelessly without reasonable regard to the safety comfort or convenience of other persons using the road contrary to section 46(i) of the Motor Vehicles Enactment (Cap. 168).

Held: that the section created two separate offences and that the conviction was bad for duplicity. The appellant, by virtue of the provisions of section 166 of the Criminal Procedure Code (Cap. 6) could have been charged in the alternative.

Lee Chin Kee v. *Public Prosecutor,* [1935] F.M.S.L.R. 33; [1935] M.L.J. 157, considered.

B. K. Das for the appellant.

I. W. Blelloch (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

[115] **Howes J.:** This is an appeal from a conviction under section 46(i) of the Motor Vehicles Enactment, (Cap. 168) which reads:— [115]

> "46 (i) A person who drives a motor vehicle on any road carelessly or without reasonable regard to the safety comfort or convenience of other persons using the road shall be punished with a fine which may extend to one hundred dollars."

The charge framed was as follows:—

> "That you at 6.45 p.m. on 5-11-35 at Tanjong Malim did drive your car carelessly without reasonable regard to the safety comfort or convenience of other persons using the road thereby resulting in a collision of your car to wit with the Police loadometer an offence under section 46(i), Motor Vehicles Enactment (Cap. 168)."

The first ground of appeal is that the charge is bad in law for duplicity. This was a summary trial, and it is necessary to refer to section 173 of the Criminal Procedure Code (Cap. 6) which governs such trials. It reads thus:—